

GRANT AGREEMENT

Grant Information					
Grantee:	Ohio University			Grant Control No.:	13-032
Address:	105 Research & Technology Center				
City:	Athens	State:	OH	Zip:	45701
Project Local Jurisdiction:	Athens	Effective Date:	July 23, 2012		
Project County:	Athens	Project Completion Date:	July 23, 2013		
Project Contact					
Grantee Contact:	Mr. Robert Silva			Title:	Director
Address:	Technology Transfer Office, 340 West State Street, Unit 14, Athens			State:	OH Zip: 45701
Phone Number:	(740) 593-0976	Fax Number:	(740) 593-0186		
Email Address:					
Job Commitment and Investment					
Jobs to be Created:	N/A	Jobs to be Retained:	N/A	Cost Share Amount:	\$50,000.00

This Grant Agreement (the "Agreement") is made and entered into by and between the State of Ohio, Development Services Agency, ("Grantor") and Ohio University, ("Grantee") to set forth the terms and conditions upon which Grantor will provide financial assistance to Grantee and Grantee will use the financial assistance for its Trajectory Tracking Flight Controller by Trajectory Linearization project at the Grantee's facility located in the City of Athens, Athens County, Ohio. (the "Project") In consideration of the mutual promises and covenants hereinafter set forth, each of Grantee and Grantor (collectively, the "Parties") agree as follows:

Article 1 - Incorporation of Ancillary Documents

1.1 **Exhibits.** The following Exhibits are attached to the Agreement and are incorporated into it by reference.

- (a) Exhibit I – Statement of Conditions
- (b) Exhibit III – Cost Share Guidelines, if applicable
- (c) Exhibit IV – Provisions for Disbursements of Capital Funds, if applicable

The following Exhibits are not attached to the Agreement but are incorporated into it by reference.

- (d) Exhibit II – Request for Proposals, if applicable
- (e) Exhibit V – Proposal, As Amended

1.2 **Order of Preference.** If any of the provisions of the documents comprising the Agreement conflict, the order of preference for authority of the documents shall be first, the text of the Agreement itself, followed by the Exhibits as set forth in the alphabetical order, (a) through (f), of Section 1.1 above regardless of whether or not an Exhibit is attached to the Agreement. Furthermore, any reference to an Exhibit is deemed to include any documents and materials incorporated by reference into such Exhibit.

Article 2 - Grant of Funds

- 2.1 **Grant Amount.** Grantor hereby grants to Grantee Third Frontier Research and Development funds in the amount of **Fifty Thousand and No/Dollars (\$50,000.00)** (the “Grant Funds”) for the sole and express purpose of undertaking the Project. The Grant Funds include any and all interest and investment income that may accrue on such funds from the time they are released by Grantor until the time they are expended as provided in this Agreement.
- 2.2 **Availability of Other Funds.** It is a condition to the award of Grant Funds that Grantee provides additional funds from other sources to pay Project costs in excess of the Grant Funds. Grantee represents and warrants to Grantor that Grantee has obtained such additional funds or that Grantee has a binding commitment for such additional funds and, with the exercise of reasonable diligence, will have obtained such additional funds no later than the time such funds will be required to pay Project costs as and when such costs are incurred and payable. As a condition of the foregoing grant, Grantee agrees to expend, and Grantee shall expend, in support of the Project, the Cost Share Amount as set forth on page one of this Agreement. The Cost Share Amount shall be made available and used in accordance with the guidelines set forth in Exhibit I and Exhibit III, and Grantee shall be required to account for the expenditure of the Cost Share Amount from time to time during the Project Period (as defined in Section 3.1) in accordance with the cost share ratio set forth in Exhibit V. The Cost Share Amount must be used directly in support of the Project and not for coincidental or related/similar allocations. The Cost Share Amount must be necessary and directly allocable to activities that support the Project objectives. The entire Cost Share Amount shall be expended no later than the Project Completion Date (as set forth on page one of this Agreement). Resources designated for cost share cannot be used and counted against the Cost Share Amount if such resources have also been, or will be, counted toward satisfying a cost share requirement of another award of grant funds. If Grantee determines or has reason to believe that its cost share commitment under this Agreement will not be satisfied, Grantee shall notify Grantor immediately in writing. If Grantee is able to substitute resources of its own or from other sources in an amount equal to or greater than the Cost Share Amount (or of comparable or better value and quality in the case of in-kind resources contemplated by Exhibit V), Grantor shall accept the substitution of resources and Grantee shall be deemed to be in compliance with its cost share commitment. In the event Grantee is not able to provide the Cost Share Amount as required by this Agreement, Grantee shall be in default and Grantor may, in its discretion, either terminate this Agreement and the award of Grant Funds or reduce the award of Grant Funds to be received by Grantee.
- 2.3 **Payment of Funds.** Grantor shall pay the Grant Funds, or cause the Grant Funds to be paid, upon Grantee’s written request. Grantee’s request for payment shall be in form and substance as required by Grantor from time to time. Grantee may request payments, and Grantor shall pay or cause to be paid the Grant Funds, only in accordance with Exhibit I and subject to any future budget reductions required by the legislature of the State of Ohio (the “State”). Grantor shall be the sole judge of the adequacy of payment requests. All project costs to be paid with Grant Funds shall be supported by contracts, invoices, vouchers, paid receipts and other documentation as appropriate to evidence the costs incurred by Grantee to perform the work described in Exhibit V. Grantee shall submit to Grantor source documentation of such project cost with each payment request. Grantee shall report all Project related costs in compliance with United States Office of Management and Budget Circular A-21 “Cost Principles for Educational Institutions,” or Circular A-122 “Cost Principles for Non-Profit Organizations,” as applicable. For-profit organizations shall comply with Circular A-122.

- 2.4 **Grant Funds Not Expended.** If the Grant Funds are not expended by Grantee in accordance with the terms and conditions of this Agreement or within the time period set forth in this Agreement, the award of the Grant Funds shall cease and Grantor shall have no further obligation to disburse the Grant Funds. Grantor shall also have no obligation to disburse any amount of the Grant Funds that exceeds the eligible costs of the Project actually incurred by Grantee. If Grant Funds have been paid to Grantee and Grantor determines that Grantee has not performed in accordance with the terms and conditions of this Agreement, Grantee shall return such improperly expended Grant Funds within thirty (30) days after demand by Grantor. In the event that the Project does not become operational by the Project Completion Date (as such date may be amended)) and/or is affirmatively abandoned by Grantee, all Grant Funds paid by Grantor to Grantee under this Agreement shall be refunded to Grantor by Grantee within thirty (30) days after the Project Completion Date or abandonment has occurred.
- 2.5 **Property and Equipment Purchases.** All property purchased by Grantee using any Grant Funds shall be and remain the property of Grantee. Grantee shall be responsible for the security, maintenance and insurance of all property acquired by Grantee using any Grant Funds.
- 2.6 **Accounting.** Grant Funds shall be recorded separately in the books and records of Grantee (the "Grant Accounts"). Grantee shall keep its books in a manner consistent with generally accepted accounting principles. All disbursements from the Grant Accounts shall comply with the requirements of this Agreement.
- 2.7 **Financial Benefits.** Grantee shall insure that a reasonable portion of any financial benefits derived from or generated by the development or commercialization of any technology as a result of the Project accrues to Grantee. This Agreement does not, however, prohibit other contributors to the development or commercialization of any such technology from receiving a portion of the financial benefits *provided that* the financial benefit to such other contributors, collectively, is commercially reasonable in relation to the financial investment or contribution of other value made by such other contributors to the development or commercialization of the technology. The factors to be evaluated in determining the reasonableness of allocations of financial benefit may include, but are not limited to, the amount of investment capital needed to develop and/or commercialize the technology, the length of time necessary for development and/or commercialization and the commercial value of any services provided by other contributors to the Project. Grantee acknowledges that it is the objective of the Grantor in awarding the Grant Funds to create jobs and business opportunities in Ohio and otherwise to benefit the economy of Ohio. Accordingly, Grantee shall undertake in good faith to carry out the Project and to develop and commercialize any resulting technology in such a manner as to create jobs and business opportunities in Ohio and otherwise to benefit the economy of Ohio, including, without limitation, making such objectives a significant factor in the evaluation and selection of potential licensees, distributors, joint venturers and business partners and in the terms of any license, option to license, distribution agreement or other agreement to exploit commercially any such technology.
- 2.8 **Subcontractors/Subgrantees.** With Grantor's prior approval, Grantee may subcontract and/or subgrant portions of the work or activities constituting the Project as described in Exhibit V. All subcontracts and subgrants shall be made subject in all respects to the terms and conditions of this Agreement. Notwithstanding any subcontract or subgrant, Grantee shall be solely responsible for the performance of work and activities constituting the Project in accordance with the terms and conditions of this Agreement. The work and activities to be performed by subcontractors or subgrantees shall not exceed or vary from the work or activities described in Exhibit V without the prior written consent of Grantor.

- 2.9 **Permissible Expenses.** If “travel expenses,” as defined in Ohio Administrative Code Rule 126-1-02, are a cost of the Project eligible for reimbursement with Grant Funds, Grantee shall be reimbursed for those permissible travel expenses in amounts consistent with Ohio Administrative Code Rule 126-1-02, as updated from time to time (the “Expense Rule”) and Grantee agrees that it shall not be reimbursed and the Grantor shall not pay any items that are deemed to be “non-reimbursable travel expenses” under the Expense Rule, whether purchased by the Grantee or the Grantor’s employees or agents.
- 2.10 **Statement of Conditions.** The award of Grant Funds is made subject to those provisions of Exhibit I identified as being applicable to this Agreement. Grantee acknowledges and agrees that Exhibit I, Exhibit II, and the description of the Project as set forth in Exhibit V shall be used to determine eligibility for payment under this Agreement. In the event Grantee fails to perform in accordance with the terms and conditions set forth in such Exhibits, Grantee shall be in default of its obligations in this Agreement and Grantee may be required to repay to Grantor an amount of Grant Funds determined by Grantor.

Article 3 – Term and Termination

- 3.1 **Effective Date, Completion Date and Grant Expiration Date.** This Agreement shall be effective on the Effective Date as set forth on page one of this Agreement. Grantee shall complete the Project and incur all eligible expenses not later than the Project Completion Date as set forth on page one of this Agreement. This Agreement shall expire 3 years after that Project Completion Date (the “**Grant Expiration Date**”). The period of time from the Effective Date until the Project Completion Date shall be referred to as the “**Project Period**.” The period of time from the Effective Date until the Grant Expiration Date shall be referred to the “**Term of the Agreement**.”
- 3.2 **Termination.** This Agreement may be terminated prior to the Grant Expiration Date as set forth in this Section 3.2.
- 3.2.1 **Default.** Grantor may terminate this Agreement following any default of Grantee as further described in Article 14 of this Agreement.
- 3.2.2 **Impracticability.** Either Grantor or Grantee may terminate this Agreement if completion of the Project becomes impracticable. Completion of the Project shall be considered impracticable if:
- (a) A component of the Project proves to be an experimental failure through no fault of Grantee and such component is necessary for the Project to be completed;
 - (b) An experimental development by any entity (including Grantee) makes furtherance of the Project impracticable; or
 - (c) The failure, by no fault of Grantee, of an experimental protocol that is proposed in the Project and is a major component of the Project that will make completion of the Project impracticable.
- 3.2.3 **Mutual Agreement.** Grantor and Grantee may agree in writing to terminate this Agreement. Grantor may require as a condition for any such termination recapture by Grantor of any or all of the Grant Funds.
- 3.2.4 **Early Termination.** Grantor may also terminate this Agreement if Grantee (i) defaults under another Agreement between the Grantor and/or the Tax Credit Authority and Grantee, (ii) admits Grantee’s inability to pay its debts as such debts become due, (iii) Grantee commences a

voluntary bankruptcy, (iv) and involuntary bankruptcy action occurs against Grantee which remains undismissed or unstayed for sixty (60) days, (v) Grantee fails to meet the minimum funding requirements under the Employee Retirement Income Security Act or other such employee benefits plan, or (vi) Grantor has reason to believe Grantee has ceased operations at the Project location.

3.3 Effect of Termination.

- 3.3.1 **No Further Disbursements.** Upon the termination of this Agreement for any reason, Grantor shall have no further obligation to disburse Grant Funds to Grantee in respect of the Project *except that* if the Agreement is terminated for impracticability, Grantor shall reimburse Grantee from the remaining balance of Grant Funds (if any) for eligible expenses, including non-cancelable commitments, incurred on or before the termination date as described by Exhibit V.
- 3.3.2 **Closeout Report.** Within sixty (60) days after the termination of this Agreement pursuant to Section 3.2, Grantee shall submit to Grantor a Closeout Report setting forth a final accounting for the Project including, without limitation, the total expenditure of Grant Funds by Grantee, and a reasonably detailed description of the status of the Project at the time of termination.
- 3.3.3 **Recapture.** In the event the Agreement is terminated by Grantor as a result of a Grantee default, Grantor may require Grantee to repay to Grantor any or all of the Grant Funds disbursed to Grantee through the termination date, plus interest on such amount from the date of the first disbursement of Grant Funds through the date of repayment (the "**Recapture Amount**"). Exercise of the recapture remedy and the determination of the Recapture Amount shall be within the sole discretion of Grantor, on behalf of the State, and shall be based upon review, evaluation, and audit of the Project by Grantor and/or its agent. The interest rate to be used in calculating the Recapture Amount shall be an annual rate equal to the rate of interest on 30-day US Treasury Bills as of the date which is ten (10) business days prior to Grantor's written demand for payment of the Recapture Amount. Grantee shall pay the Recapture Amount within thirty (30) days after written demand by Grantor.
- 3.3.4 **Performance of Termination Agreement.** In the event this Agreement is terminated by mutual agreement, Grantee shall perform all obligations of Grantee as set forth in such agreement.

Article 4 – Job Creation and Maintenance of Operations

Reserved, but not applicable to this Agreement.

Article 5 - Reporting Requirements and Periodic Review

- 5.1 **Reports.** Grantee shall submit to Grantor all fiscal and programmatic reports as and when specified in Exhibit I and/or Exhibit V.
- 5.2 **Signature and Costs.** The chief executive officer, chief financial officer, or other officer of Grantee authorized to sign tax returns on behalf of Grantee shall certify by his or her signature of each report that the information reported by Grantee is true, complete and correct. All costs incurred by Grantee to comply with the reporting requirements of this Agreement shall be borne by Grantee and shall not be an allowable expense reimbursable from Grant Funds.

- 5.3 **Remedy.** Performance reports are essential for Grantor's effective administration of this grant and its incentive programs, generally. If Grantee fails to submit any required report and such breach continues uncured for more than thirty (30) days, Grantor may recover, and Grantee shall pay, as liquidated damages for the breach, an amount equal to \$500 for each month or part of a month the report is past due.
- 5.4 **Maintenance of Records.** Grantee shall establish and maintain for at least three (3) years after the Grant Expiration Date or any earlier termination date its records regarding this Agreement, the Grant Funds and the Project, including, but not limited to, financial reports and other information pertaining to Grantee's performance of its obligations under this Agreement. If any audit, dispute or litigation is then pending, however, Grantee shall maintain such records as may be relevant to such matter until it is finally resolved.
- 5.5 **Inspection of Books and Records and Access.** At any time during normal business hours and upon not less than twenty-four (24) hours prior written notice, Grantee shall make available to Grantor or its agents all books and records regarding this Agreement and/or the Project which are in the possession or control of Grantee. Grantor and its agents may review, audit and make copies of such books and records. Grantee shall include in its agreements with any subcontractor or subgrantee receiving Grant Funds a provision authorizing Grantor and its agents access to and the right to review, audit and copy the books and records of such subcontractor or subgrantee related to its work on the Project and/or its receipt of Grant Funds. Grantor will undertake any inspection of books and records in such a manner as not to interfere unreasonably with the normal business operations of Grantee, its subcontractor or subgrantee, as the context requires.
- 5.6 **Site Visits.** At any time during normal business hours and upon not less than seventy-two (72) hours prior written notice, Grantee shall provide Grantor access to any location or facility at which work or activities related to the Project are performed. During such site visits, Grantor shall have the right to review and inspect the Project facilities and to meet with Key Personnel (as identified in Exhibit I and Exhibit V) to review the status of the Project and compliance with conditions on the award of Grant Funds.
- 5.7 **Periodic Meetings.** From time to time during the Term of the Agreement, Grantee shall meet with Grantor on a schedule mutually agreed by the Parties or upon the reasonable request of either Party to discuss the Project and to explore opportunities to access State-supported programs that provide funding, infrastructure, and services that may be critical to advancing the goals of the Project. Third parties including, for example, representatives of other State agencies, State grantees and private entities, may participate in such meetings at the invitation of Grantor.

Article 6 - Intellectual Property

- 6.1 **Intellectual Property.** "Intellectual Property" includes patents and inventions, designs, formulas, processes, materials and other patentable matter, whether or not a patent has been issued with respect to such matter; trademarks and service marks, whether or not registered; copyrights and any work of authorship in which a copyright may subsist; technical data, know-how and other information that may be protected as a "trade secret" under the Uniform Trade Secrets Act as adopted in Ohio (Ohio Rev. Code § 1333.61); and applications and registrations for, and claims with respect to, any of the foregoing.
- 6.2 **Rights and Title.** As between Grantor and Grantee, any right, title and interest in and to any Intellectual Property arising from or attributed to any of the work or activities undertaken as part of the Project shall belong to Grantee. Grantor asserts no claim of ownership or license in any of the Intellectual Property.

- 6.3 **Notification.** Grantee will promptly notify Grantor of any Intellectual Property arising from or attributed to any of the work or activities undertaken as part of the Project. Such notification shall be made not later than ten (10) days following the publication of any patent in a manner so as not to jeopardize the patentability of an invention or compromise the right of Grantee to obtain or maintain legal rights in and protection of its ownership interests in the Intellectual Property. Grantee shall keep Grantor apprised of all material developments with respect to Grantee's efforts to obtain patents or other protection of its ownership interests in the Intellectual Property.

Article 7 - Publicity

- 7.1 **Use of Name.** Neither Party may use the name of the other in any form of advertising or promotion or otherwise without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.
- 7.2 **Acknowledgements.** Grantee shall acknowledge support provided by the State for the Project in the circumstances listed in Exhibit I. Any such acknowledgment shall be in the form set forth in Exhibit I or as otherwise expressly approved by Grantor in writing.

Article 8 - Publication

- 8.1 **Permission to Publish.** Grantor recognizes that the results of the Project may be publishable and agrees that Grantee's researchers engaged in the Project may be permitted to present their work at symposia and national or regional professional meetings and to publish in journals, theses or dissertations, or others publications, the methods and results of the Project; *provided that* the researcher publishing or presenting any work associated with the Project includes an acknowledgment of the contribution made by the State as described in Article 8 of this Agreement.
- 8.2 **Disclaimer.** Any publication, study or report prepared by Grantee or any of its agents, including, without limitation, subcontractors and subgrantees, in connection with the grant made pursuant to this Agreement or using information created or obtained through work or activities using or supported by any Grant Funds shall include a disclaimer statement to the effect that although any such publication [study or report] was prepared with financial support from the State of Ohio, that the content of any publication [study or report] reflects the views of Grantee and does not purport to reflect the views of Grantor and/or that of the State of Ohio

Article 9 – Amendments and Modifications

- 9.1 **Amendments and Modifications.** Either Party may at any time during the Term of this Agreement request amendments or modifications to this Agreement. Requests for amendment or modification shall be made in writing and shall specify the requested changes and the justification for such changes. The Parties shall review the request for modification taking into account regulations applicable to the grant program and the status and goals of the Project. If the Parties determine that the Agreement should be so amended, an amendment shall be written, approved, and executed in the same manner as the Agreement.
- 9.2 **Project Changes.** Without limiting the generality of the foregoing, a written amendment shall be required to effect any change to the Project as set forth in Exhibit V.
- (a) Any change in Project scope or objectives;
 - (b) Any change in Key Personnel identified in Exhibit V or in Exhibit I;

- (c) Any absence of Key Personnel from work or activities constituting a part of the Project for more than ninety (90) days within any 12-month period or a 25% or greater reduction in time of the Key Personnel from work or activities constituting a part of the Project, regardless of the reason for the absence or reduction in time;
- (d) One or more alterations to budget line items appearing in Exhibit V that are funded in whole or in part by the Grant Funds if the change or series of changes exceeds ten percent (10%) of the total amount of Grant Funds on a cumulative basis or if the alteration conflicts with any other terms or conditions of this Agreement;
- (e) Transfer of any portion of the Grant Funds into a line item not previously funded in whole or part with Grant Funds or creating a new line item to be funded in whole or in part with Grant Funds;
- (f) Additional time/no cost extensions or other significant delays in completion of the Project;
- (g) Conducting, displacing, transferring, or subcontracting any of the work under Exhibit V outside the State; and
- (h) Substituting or adding any subcontractor, collaborator or subgrantee not identified or budgeted in Exhibit V or removing any subcontractor, collaborator or subgrantee identified or budgeted in Exhibit V; *provided, however*, that Grantee may restrict the access of any subcontractor, collaborator or subgrantee (including any of its respective agents and employees) to the work or other activities constituting the Project pending Grantor's consent to removal if Grantee has reason to believe continuing access by such individual or entity will be detrimental to the Project.

Grantor reserves the right to reject any request for Project change. Grantee agrees that it will pay or reimburse Grantor for any and all costs associated with any technical review required by Grantor in connection with any requested Project change whether or not the revision is approved.

Article 10 - Compliance with Law

- 10.1 **General.** Grantee shall comply with all applicable federal, state and local laws in the conduct of the work supported by Grant Funds. Neither Grantee nor any of its employees are or shall be deemed to be employees of Grantor for any purpose including, without limitation, application of the Fair Labor Standards Act minimum wage and overtime payment provisions, the Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, any state or local revenue or tax laws, state workers' compensation laws and state unemployment insurance laws. Grantee accepts full responsibility for payment of all taxes including, without limitation, unemployment compensation insurance premiums, all income tax deductions, Social Security deductions, and any and all other taxes or payroll deductions required for all employees engaged by Grantee in the performance of the work supported by Grant Funds.
- 10.2 **Ethics Laws.** In accordance with Executive Order 2011-03K, Grantee, by its signature on this document, certifies: (1) it has reviewed and understands Executive Order 2011-03K, (2) has reviewed and understands the Ohio ethics and conflict of interest laws including, without limitation, Ohio Revised Code §§ 102.01 *et seq.*, §§ 2921.01, 2921.42, 2921.421 and 2921.43, and §§ 3517.13(I) and (J), and (3) will take no action inconsistent with those laws and the order, as any of them may be amended or supplemented from time to time. Grantee understands that failure to comply with the Ohio ethics and conflict of interest laws, is in itself, grounds for termination of this Agreement and the grant of funds made pursuant to this Agreement and may result in the loss of other contracts or grants with the State of Ohio.

- 10.3 **Conflict of Interest.** No personnel of Grantee, contractor of Grantee or personnel of any such contractor, and no public official who exercises any functions or responsibilities in connection with the review or approval of any work completed under this Agreement, shall, prior to the completion of such work, voluntarily or involuntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge or fulfillment of his or her functions or responsibilities with respect to the completion of the work contemplated under this Agreement. Any such person who, prior to or after the execution of this Agreement, acquires any personal interest, involuntarily or voluntarily, shall immediately disclose his interest to Grantor in writing. Thereafter, such person shall not participate in any action affecting the work under this Agreement unless Grantor determines that, in light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest. Furthermore, Grantee certifies that there is in effect an administrative process to identify and resolve financial or other conflicts of interest that may affect or create the appearance of affecting the objectivity of any research to be conducted with the support of Grant Funds provided under this Agreement. Grantee will inform Grantor in writing of all conflicting financial or other interests that have been identified and provide for each such conflict a description of how the conflict has been resolved to protect the Project from bias or the appearance of bias. Grantee certifies that its conflict of interest policies and procedures comply with Ohio Revised Code §§ 102.03, 2921.42, 2921.43, and 3345.14.
- 10.4 **Workplace Environment.** Grantee shall comply with all applicable federal, state, and local laws regarding smoke-free and drug-free workplaces and shall make a good faith effort to ensure that any of its employees or permitted subcontractors engaged in the work being performed in connection with the Project do not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.
- 10.5 **Equal Employment Opportunity.** Grantee shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, age, military status or ancestry. Grantee shall ensure that applicants for employment are considered for employment, and that employees are treated during employment, without regard to their race, religion, color, sex, national origin, disability, age, military status or ancestry. Grantee will incorporate the requirements of this paragraph in all of its contracts for any of the work undertaken on the Project (other than subcontracts for standard commercial supplies or raw materials), and Grantee will require all of its contractors for any part of such work to incorporate such requirements in all subcontracts for such work.
- 10.6 **Declaration Regarding Material Assistance/Non-assistance to a Terrorist Organization.** If applicable, Grantee must certify compliance with Ohio Revised Code § 2909.33.
- 10.7 **Human Subjects.** In all cases in which activities involving human subjects are planned in connection with the Project, Grantee must abide by all applicable federal and state rules and regulations governing studies of human subjects at the participating organizations. If the Project contemplates activities involving human subjects, Grantee certifies that Institutional Review Board (IRB) approval for this Project is current (within one (1) year of the Effective Date of this Agreement). IRB approval shall be renewed each year the Project is active. Any modifications in the Program Plan section of the Proposal must be approved by the IRB. Grantee certifies that its human subject policies and procedures comply with the Code of Federal Regulations, Title 45, Part 46.
- 10.8 **Animal Subjects.** In all cases in which activities involving animal subjects are planned, Grantee must abide by all applicable federal and state rules and regulations governing studies of animal

subjects at the participating organizations. If the Project contemplates activities involving animal subjects, Grantee certifies that Institutional Animal Care and Use Committee (IACUC) approval for this Project is current (within three (3) years of the Effective Date of this Agreement). IACUC approval shall be renewed every three (3) years the Project is active. Any modifications in the Program Plan section of the Proposal must be approved by the IACUC. Grantee certifies that its animal subject policies and procedures comply with the US Code Title 7, §§ 2131-2156, inclusive.

- 10.9 **Outstanding Liabilities.** Grantee represents and warrants to Grantor that Grantee does not owe: (1) any delinquent taxes to the State or any political subdivision of the State; (2) any moneys to the State or a State agency for the administration or enforcement of any environmental laws of the State; or (3) any other moneys to the State, a State agency or a political subdivision of the State that are past due, whether or not the amounts owed are being contested in a court of law.
- 10.10 **Falsification of Information.** Grantee represents and warrants to Grantor that Grantee has made no false statements to Grantor or any of its agents in the process of obtaining the award of Grant Funds. If Grantee has knowingly made a false statement to Grantor or any agent of Grantor to obtain the award of Grant Funds, Grantee shall be required to return all Grant Funds immediately pursuant to Ohio Revised Code § 9.66(C)(2) and shall be ineligible for any future economic development assistance from the State, any State agency or a political subdivision pursuant to Ohio Revised Code § 9.66(C)(1). Any person who provides a false statement to secure economic development assistance may be guilty of falsification pursuant to Ohio Revised Code § 2921.13(E)(1), a misdemeanor of the first degree which is punishable by a fine of not more than \$1,000.00 and/or a term of imprisonment of not more than one hundred eighty (180) days.
- 10.11 **Aborted Fetuses.** In accordance with Ohio Revised Code § 2919.14, Grant Funds shall not be used for research involving tissue obtained from aborted fetuses.

Article 11 – Indemnification and Liability

- 11.1 **Private Enterprise Indemnification.** If Grantee is a private enterprise, Grantee shall hold harmless Grantor, its agents and their respective employees from any and all liabilities or claims caused by or resulting from Grantee's performance of the obligations or activities in furtherance of the Project or any omissions of Grantee in its performance of obligations or activities in furtherance of the Project. Grantee shall reimburse Grantor, its agents and/or their respective employees for any judgments arising from Grantee's actions or inactions, which may be obtained against Grantor, such agents or employees, as the case may be, including, without limitation, judgments for infringement of any patents or copyrights. Grantee agrees to reimburse Grantor, its agents and/or their respective employees for all costs incurred by Grantor, such agents or employees in defending any such claims or legal actions if called upon to do so by Grantor or the affected agent or employee.
- 11.2 **Public Entities Liability.** If Grantee is a public entity, Grantee shall maintain liability and property insurance to cover actionable legal claims for liability or loss which are the result of injury to or death of any person, damage to property (including property of Grantor) caused by the negligent acts or omissions, or negligent conduct of Grantee, to the extent permitted by law, in connection with any activities supported by Grant Funds provided pursuant to this Agreement. Furthermore, each party to this Agreement agrees to be liable for the negligent acts or negligent omissions by or through itself, its employees, agents, subcontractors and subgrantees. Each party further agrees to defend itself and themselves and pay any judgments and costs arising out of such negligent acts or omissions, and nothing in this Agreement shall impute or transfer any such liability from one to the other.

Article 12 – Public Records and Confidentiality

- 12.1 **Public Records.** Grantee acknowledges that this Agreement and other records in the possession or control of Grantor regarding the Project are public records under Ohio Revised Code § 149.43 and are open to public inspection unless a legal exemption applies. Grantee's non-public financial information may be exempt from disclosure under a trade secret exception to the public records law.
- 12.2 **Trade Secrets.** Ohio has adopted the Uniform Trade Secrets Act, which prohibits the disclosure of information determined to be a "trade secret" as defined in Ohio Revised Code § 1333.61(D). Any information submitted to Grantor shall be considered public information and shall be released if requested unless such information is determined to be a "trade secret." Any information submitted to Grantor which is considered by Grantee to be a "trade secret" must be clearly marked as such. Every report, deliverable or other submission containing "trade secret" information must contain a page that lists each page in the submission where trade secret information appears and the number of occurrences of trade secret information on that page, identify each and every occurrence of the information within the submission with an asterisk before and after each line containing the trade secret information and underline the trade secret information itself.

Article 13 - Notices

- 13.1 **Procedures for Delivering Notice.** Any notice or report required or permitted to be given under this Agreement shall be deemed to have been sufficiently given for all purposes if mailed by first class certified or registered mail or sent by commercial delivery to the following addresses of the Parties:
- (a) If to Grantor:
- Office of Technology Investments
ATTN: Grant Administration
Ohio Development Services Agency
77 South High Street, 25th Floor
Columbus, Ohio 43215-6130
Fax No.: (614) 644-5758
- (b) If to Grantee:
- To the contact and address as set forth on page one of this Agreement or to such other addresses as shall hereafter have been furnished by written notice to the other party.

Article 14 – Events of Default and Remedies

- 14.1 **Absence of Key Personnel.** Grantee acknowledges that the availability of the Key Personnel identified in Exhibit I and Exhibit V to perform activities in connection with the Project is a material condition for the award of Grant Funds. Accordingly, Grantee shall notify Grantor not later than seven (7) days after any Key Personnel becomes unavailable to perform the tasks contemplated by Exhibit V to be performed by such individual. For purposes of this Agreement, an individual will be "unavailable" to the Project if (a) the individual's employment or agreement to provide services to Grantee is terminated for any reason, (b) the individual's duties are changed so as to remove him/her from Project work or activities, (c) during any calendar month, the

individual's hours spent on or available to be spent on work or activities related to the Project are reduced for any reason by more than twenty-five percent (25%) of the time contemplated in Exhibit V, or (d) a position for any Key Personnel is vacant on the Effective Date and remains vacant for more than ninety (90) days after the Effective Date (or such later date as set forth in Exhibit V). Grantee shall have ninety (90) days to replace any Key Personnel who becomes unavailable to the Project for any reason with an individual acceptable to Grantor in its reasonable judgment. In the event any Key Personnel are not replaced within ninety (90) days after he/she first becomes unavailable to the Project or if any vacancy is not filled as described above, Grantee shall be in default of this Agreement.

- 14.2 **Disposition or Relocation.** If during the Term of the Agreement Grantee (a) sells or otherwise transfers ownership of its business or assets except as authorized under Section 14.3 of this Agreement, whether such transfer is effected by merger, sale of all or substantially all of its assets or operations, or any other transaction which results in a change of control of Grantee or the Project activities, (b) sells or otherwise transfers any operations or assets necessary for Grantee to continue to perform the Project, or (c) relocates outside the State all or substantially all of its assets or operations or any operations or assets necessary for Grantee to continue the Project, Grantee shall be in default of this Agreement. Subject to confidentiality agreements Grantee may owe to third parties and to any requirements necessary to ensure compliance with applicable securities laws regarding the disclosure of non-public information, Grantee shall notify Grantor in writing at least ninety (90) days prior to the date of any sale or other transfer or relocation of its business, operations or assets; *provided, however*, that if any such sale, transfer or relocation is to occur within fewer than ninety (90) days prior to the time Grantee first becomes aware of such event or able to disclose subject to the limitations noted above, Grantee shall notify Grantor promptly and, at the request of Grantee, Grantor may, but shall not be required to, waive the 90-day notice requirement.

14.3 **Non-Performance and Revised Project.**

- 14.3.1 **Non-Performance.** Grantee shall be in default of this Agreement if Grantee fails to perform or otherwise comply with any term or condition of this Agreement, including, without limitation, failure to complete the Project as set forth in Exhibit V or failure to expend the Cost Share Amount as provided in this Agreement, and any such failure continues for more than forty-five (45) days after written notice from Grantor (a "**Default Notice**"). Grantor's Default Notice shall identify the default in reasonable detail. During the forty-five day (45) cure period, Grantee shall incur only those obligations or expenditures pre-approved by Grantor which are necessary to enable Grantee to continue its operation and remedy the failures identified in the Default Notice.
- 14.3.2 **Revised Project.** If during the forty-five (45) day cure period Grantee determines that it will be unable to complete the Project as set forth in Exhibit V and Grantee has not then received from Grantor all of the Grant Funds, Grantee may propose changes to the Project (the "**Revised Project**"). Any Revised Project must be proposed in writing to Grantor prior to the expiration of the cure period. Grantor, in its sole discretion, may accept or reject the Revised Project. If the Revised Project is accepted by Grantor, the Revised Project shall be deemed to constitute a cure of Grantee's non-performance and the Parties shall execute of a written amendment to this Agreement consistent with the terms and conditions Grantor's acceptance of the Revised Project. Thereafter, the award of Grant Funds pursuant to this Agreement shall be deemed to have been made for completion of the Revised Project. If the Revised Project is rejected by Grantor and Grantee has not otherwise cured its defaults, then this Agreement shall be terminated as set forth in Article 4.

- 14.4 **Remedies.** Following a default by Grantee of this Agreement, Grantor may terminate this Agreement and take the actions associated with termination as further described in Sections 3.2 and 3.3 of this Agreement. In addition, Grantor may exercise such other remedies as may be available to Grantor under this Agreement or that may exist now or hereafter at law, in equity or by statute. No remedy is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative.

Article 15 - Miscellaneous

- 15.1 **Governing Law.** The validity and interpretation of this Agreement and the legal relationship of Grantee and Grantor shall be governed by the laws of the State of Ohio. All actions regarding this Agreement shall be brought in a court of competent subject matter jurisdiction in Franklin County, Ohio, and Grantee agrees that venue in such court is proper.
- 15.2 **Forum and Venue.** Grantee irrevocably submits to the non-exclusive jurisdiction of any federal or state court sitting in Columbus, Ohio, in any action or proceeding arising out of or related to this Agreement, Grantee agrees that all claims in respect of such action or proceeding may be heard and determined in any such court, and Grantee irrevocably waives any objection it may now or hereafter have as to the venue of any such action or proceeding brought in such court or that such court is an inconvenient forum. Nothing in this Agreement shall limit the right of Grantor to bring any action or proceedings against Grantee in the courts of any other jurisdiction. Any actions or proceedings by Grantee against Grantor or the State of Ohio involving, directly or indirectly, any matter in any way arising out of or related to this Agreement shall be brought only in a court in Columbus, Ohio.
- 15.3 **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the Parties with respect to its subject matter. No prior verbal agreement, conversation, understanding or representation between any officers, agents, or employees of the Parties either before or after the execution of this Agreement shall affect or modify any of the terms or conditions of this Agreement.
- 15.4 **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this Agreement.
- 15.5 **Assignment.** Neither this Agreement nor any rights, duties, or obligations of Grantee pursuant to this Agreement shall be assigned by Grantee without the prior written consent of Grantor, which shall not be unreasonably withheld. Any assignment not made in accordance with this Section shall be void.
- 15.6 **Certification of Funds Available.** None of the rights, duties and obligations described in this Agreement shall be binding on either Party until all statutory provisions of the Ohio Revised Code, including, without limitation, § 126.07, have been complied with, and until such time as all funds have been made available and are forthcoming from the appropriate State agencies.
- 15.7 **Headings.** The article and section headings are provided for convenience of reference only and are not to be used in construing this Agreement.

- 15.8 **Forbearance Not a Waiver.** No act of forbearance or failure to insist on the prompt performance by Grantee of its obligations under this Agreement, either express or implied, shall be construed as a waiver by Grantor of any of its rights hereunder.
- 15.9 **Survival.** Any provision of this Agreement or any documents delivered pursuant to this Agreement which by their nature are intended to survive the expiration or other termination of this Agreement, including, without limitation, any indemnification obligation, shall so survive and shall benefit the respective successors and permitted assigns of the Parties.
- 15.10 **Pronouns.** The use of any gender pronoun shall be deemed to include the other gender, and the use of any singular noun or verb shall be deemed to include the plural, and vice versa, whenever the context so requires.
- 15.11 **Binding Effect.** Each and all of the terms and conditions of this Agreement shall extend to and bind and inure to the benefit of Grantee, its successors and permitted assigns.

Article 16 – Unusual Circumstances Affecting Performance

- 16.1 **Unusual Circumstances Affecting Performance.** In the event Grantee cannot meet any or all of the obligations under this Agreement for any reason, Grantee shall immediately notify Grantor of such circumstances in writing. Any modification or extension of the Agreement in respect of such circumstances shall be at the sole discretion of Grantor.

Article 17 - Acceptance

- 17.1 **Acceptance.** By the signature of its legal representative below, Grantee confirms its acceptance of Grantor's offer of the award of the Grant Funds and the obligation of Grantee to complete the Project on the terms and subject to the conditions of this Agreement.

IN WITNESS WHEREOF, each of Grantor and Grantee has executed this Agreement on the day and year set aside by their respective signatures.

GRANTEE:

Ohio University

By: _____

Name: Shane L. Gilkey, MPA
Assistant V.P. for Research

Title: _____

Date: 11/1/12

GRANTOR:

State of Ohio
Development Services Agency

Christiane Schmenk
Director, Ohio Development Services Agency

By: _____

Name: Beth Trombold

Title: Assistant Director

Date: 11/14/12

Exhibit I – Statement of Conditions

OHIO DEVELOPMENT SERVICES AGENCY STATEMENT OF CONDITIONS TO GRANT AGREEMENT

All capitalized terms used but not otherwise defined in the Statement of Conditions shall have the meanings given them in the Grant Agreement to which this Exhibit is attached. References to the "Technology Division" mean the Technology Division of the Development Services Agency.

A. DELIVERABLES, METRICS AND MILESTONES:

1. Within thirty (30) days after execution of the Agreement, Grantee will submit to the Technology Division for approval Level A and B metrics and expected dates of achievement for each such metric. Level A metrics must identify in reasonable detail the nature and value of the resource or resources to be sought. Level B metrics must describe the objective factors that will be used to measure the commitment of the prospective resource provider(s). When the Level A and B metrics are submitted to the Technology Division, Grantee shall also submit in a separate document a list of major milestones and deliverables, which would be defined as Level C Metrics, with expected delivery dates for each. Milestones and delivery dates must be included for all undertakings and commitments included in Grantee's proposal, particularly those undertakings and commitments made to comply with specific requirements of the RFP.

- a) **Sponsored Research and Technical Services Metrics** – Sponsored Research and Technical Services Metrics measure the Project's performance in attracting funds to conduct research or provide technical services that fit within the expressed mission of the Project.

A Level Metrics – The acquisition of public or private funding (cash or cash equivalents) for sponsored research and technical services that fit within the expressed mission of the Project.

B Level Metrics – Tangible evidence of interest by resource provider to engage in sponsored research and technical services that fit within the expressed mission of the Project.

___ Applies _X_ Does Not Apply

- b) **Commercialization Metrics** – Commercialization Metrics measure the Project's performance in developing technology and then moving that technology from idea to the market in the form of a product or service. The only projects that qualify for measurement using the Commercialization Metrics (as opposed to the Sponsored Research and Technical Services Metrics) are those in which the Project has IP rights.

A Level Metrics – Public or private resource providers fund commercialization activities in which the Project has IP rights.

Exhibit I – Statement of Conditions

B Level Metrics – Tangible evidence of interest by resource provider to engage in commercialization funding transaction.

___ Applies X Does Not Apply

2. Within thirty (30) days after execution of the Agreement, Grantee will submit to the Technology Division a Start-up Tactical Plan covering first ninety (90) days of operation.

___ Applies X Does Not Apply

3. Within thirty (30) days after execution of the Agreement, Grantee will submit a First-Year Program Plan, including the project mission and objectives, detailed milestones, timelines, and success goals.

___ Applies X Does Not Apply

4. Grantee is receiving Grant Funds under the Entrepreneurial Signature Program. Grantee must maintain an involvement with the named State-funded technology incubator(s) and pre-seed fund(s) as stated in Exhibit V, the Proposal, As Amended.

___ Applies X Does Not Apply

5. Grantee is receiving Grant Funds under the Ohio Third Frontier program. Grantee must identify its requirements for high performance computing facilities and services, including hardware, software, and infrastructure services. If Grantee's requirements exceed \$100,000 for the Project, the Ohio Supercomputer Center will convene a panel of experts to determine whether Grantee's needs for such computing facilities and services can be met through Ohio Supercomputer Center facilities or through other means and report such information to the Ohio Third Frontier Commission.

___ Applies X Does Not Apply

B. COST LIMITATIONS:

1. Grantee shall not pledge all or any part of the Grant Funds as security for any loan or debt of any kind except as expressly authorized by Grantor in writing.

X Applies ___ Does Not Apply

2. Indirect costs of the Project may not exceed [0] percent of the total direct costs of the Grant Funds. "Indirect costs" and "direct costs" are further described in Exhibit II.

X Applies ___ Does Not Apply

Exhibit I – Statement of Conditions

3. No Grant Funds provided to support the operating portion of the Project budget may be used for equipment, renovation, construction, or property acquisition costs.

☒ Applies ☐ Does Not Apply

4. Grantee is receiving Grant Funds under the Ohio Third Frontier program, and Grantee is using Grant Funds to create a Pre-Seed Fund. Grantee shall use the Grant Funds as proceeds of its Pre-Seed Fund to invest in various companies (the "Investments") that meet the requirements of Grantee's Pre-Seed Fund. Grantee shall use the Grant Funds in accordance with Article VIII, Section 13 of the Ohio Constitution.

☐ Applies ☒ Does Not Apply

5. Grantee is receiving Grant Funds under the Ohio Third Frontier program, and Grantee is using Grant Funds to create a Pre-Seed Fund. Grant Funds will be released by Grantor upon approval of the executed escrow agreement among Grantee, the escrow agent and Grantor, receipt and approval of a request for disbursement, and documentation of the availability of matching funds.

☐ Applies ☒ Does Not Apply

6. At least [0] business days before any meeting in which it is likely that a formal decision will be made to proceed with a post due-diligence pre-investment candidate(s), Grantee shall provide the Grantor with the date, time, and location of the meeting and supply background information on the candidate(s) for investment in order that the Grantor may decide whether to attend the meeting and comment on any of the investments.

☐ Applies ☒ Does Not Apply

7. Grantee is a [for-profit, not-for-profit] entity creating a for-profit Pre-seed Fund using Ohio Third Frontier grants funds. Grantee shall distribute to an Ohio not-for-profit technology intermediary organization(s) selected by the grantee and approved by the Development Services Agency an amount equal to the Grant Profit Allocation. To calculate the Grant Profit Allocation, the Grant Funds shall be treated in the same manner as a private investment in Grantee's for-profit Pre-seed Fund made on terms comparable to the investments of private investors in the for-profit Pre-seed Fund. Upon any distribution of profits by the for-profit Pre-seed Fund to investors in such fund, the for-profit Pre-seed Fund will pay to the designated Ohio not-for-profit technology intermediary organization the applicable Grant Profit Allocation. So long as no default occurs and is continuing under the Agreement and the for-profit Pre-seed Fund continues to operate, Grantee shall have no obligation to return the Grant Funds to Grantor or to pay any of the Grant Funds to any third party. Upon liquidation of the for-profit Pre-seed Fund, Grantee shall pay to the designated Ohio not-for-profit technology intermediary organization(s) an amount equal to the Profit Allocation distribution that otherwise would have been made to a private investor with an investment made in the same amount of Grant Funds.

Exhibit I – Statement of Conditions

___ Applies X Does Not Apply

8. Grantee is a [for-profit, not-for-profit] entity creating a not-for-profit Pre-Seed Fund using Ohio Third Frontier Grant Funds. Grantee is not required to make distributions of profits from the not-for-profit Pre-Seed Fund as described in the foregoing paragraph B.9.

___ Applies X Does Not Apply

9. Grantee is receiving Grant Funds under the Ohio Third Frontier program, and Grantee is using Grant Funds to create a Pre-Seed Fund. Grantee may use up to twenty percent (20%) of the Grant Funds actually received (subject to Cost Share requirements) to fund activities to provide Enhanced Management Services (as that term is defined in Exhibit II, the Request for Proposals). Grantee may use up to ten percent (10%) of the Grant Funds actually received (subject to Cost Share requirements) to fund Due Diligence expenses on prospective Pre-Seed Fund investments only. Notwithstanding the foregoing, the total amount of Due Diligence expenses and Enhanced Management Services expenses paid with Grant Funds and/or Cost Share Amount shall not exceed twenty percent (20%) of the amount of Grant Funds.

___ Applies X Does Not Apply

10. Grantee is receiving Grant Funds under the Ohio Third Frontier Entrepreneurial Signature Program Initiative. Grantee may pay for Management Fees out of the Grant Funds derived from the proceeds of non-taxable bonds in an amount not to exceed twenty percent (20%) of the Grant Funds derived from the proceeds of taxable bonds.

___ Applies X Does Not Apply

11. Grantee is receiving Grant Funds under the Ohio Third Frontier Entrepreneurial Signature Program Initiative. Grantee may not use any of the Grant Funds or Cost Share Amount to pay for physical infrastructure improvements, such as facilities or capital equipment.

___ Applies X Does Not Apply

C. PAYMENTS

1. A portion of the total Grant Funds may be issued as a one-time advance upon Grantor approval of Grantee's written disbursement request and justification of the advance. It will be within the Grantor's sole discretion whether or not to approve the Grantee's request. Expenditures must be accrued against the entire advance before any further disbursement of Grant Funds will be made.

___ Applies X Does Not Apply

Exhibit I – Statement of Conditions

2. Payment of Grant Funds shall be made by Grantor following receipt of Grantee's written request in form and substance required by Grantor from time to time. Payments of Grant Funds shall be subject to receipt and approval by Grantor of Grantee's invoices, quarterly reports, and other documentation in accordance with the Agreement, including the Exhibits. Grantee may submit requests for payment as costs are incurred but not more frequently than monthly, unless expressly agreed by Grantor in writing. Grantor reserves the right to withhold payment if Grantee has not made satisfactory progress in accordance with the Agreement.

☒ Applies ☐ Does Not Apply

3. The following special payment conditions apply:

- a. Payment of Grant Funds shall be made if the actual expenditure of the Cost Share Amount equals at least 75% of the projected Cost Share Amount for the corresponding period as set forth in Exhibit V.

☒ Applies ☐ Does Not Apply

- b. Grantee is located outside Ohio. As a condition of the award of Grant Funds, Grantee must move to Ohio or create a Principal Place of Business (as that term is defined in Exhibit II) in Ohio within six (6) months after the date of notification of the award, and Grant Funds will not be disbursed until such conditions are satisfied.

☐ Applies ☒ Does Not Apply

- c. Grantee is receiving Grant Funds under the Ohio Third Frontier program, and Grantee is using Grant Funds to create a Pre-Seed Fund. Grantee may request disbursement of Grant Funds into the Pre-Seed Fund account only in proportion to the Cost Share Amount then being paid into the Pre-Seed Fund.

☐ Applies ☒ Does Not Apply

4. Up to [5] percent of the total amount of Grant Funds awarded will be withheld until Grantor's receipt and approval of Grantee's final reports and completion of the Project.

☒ Applies ☐ Does Not Apply

D. COST SHARE:

1. Subject to paragraph 1(f) of this Section D, the actual cost share ratio for the Project shall not be less than the required cost share ratio set forth in Exhibit II.

- a. Cost share is required.

☒ Applies ☐ Does Not Apply

Exhibit I – Statement of Conditions

- b. The Cost Share Amount must be satisfied with cash only.

☒ Applies ☐ Does Not Apply

- c. The Cost Share Amount may be satisfied with cash and non-cash (in-kind) contributions to eligible expenses.

Minimum Cash Cost Share [\$ _____]

In-Kind Cost Share [\$ _____]

☐ Applies ☒ Does Not Apply

- d. General Revenue Funds (GRF) of the State of Ohio may not be used to fund, and shall not qualify as part of, the Cost Share Amount.

☒ Applies ☐ Does Not Apply

- e. Funds provided through any Ohio Third Frontier program may not be used to fund, and shall not qualify as part of, the Cost Share Amount.

☒ Applies ☐ Does Not Apply

- f. The cost share ratio set forth by Grantee in Exhibit V exceeds the minimum cost share ratio required by Exhibit II. The cost share ratio set forth in Exhibit V applies, and Grantee may not lower its cost share ratio at any time to the lower cost share ratio set forth in Exhibit II.

☐ Applies ☒ Does Not Apply

- g. Amounts claimed as part of Grantee's Cost Share Amount may be incurred by Grantee no earlier than **April 25, 2012** and no later than the Project Completion Date.

☒ Applies ☐ Does Not Apply

2. Expenditures to be counted against the Cost Share Amount shall be reported to Grantor as follows:

- a. Grantee shall report cost share expenditures with each request for payment submitted to Grantor.

☒ Applies ☐ Does Not Apply

- b. Grantee shall report cost share expenditures to Grantor at least quarterly.

☒ Applies ☐ Does Not Apply

Exhibit I – Statement of Conditions

E. REPORTING REQUIREMENTS:

Grantor reserves the right to determine the content and design the format of all reports required by the Agreement to be submitted by Grantee and to modify form and required content of reports from time to time during the Term of the Agreement. Grantee acknowledges that the ultimate outcomes of State of Ohio funding are the creation of jobs, company formation, expansion and attraction of companies, and other positive impacts on the economy of the State of Ohio. Accordingly, Grantee agrees that it shall report timely and accurately the information requested by Grantor, including, without limitation, outcomes to the extent outcomes can be identified and attributed to Project activities.

1. Semi Annual Progress Report: Grantee shall deliver to Grantor, within thirty (30) days after the end of each Semi Annual Progress period throughout the Project Period, a Progress Report. Semi Annual Progress period end dates: March 31 and September 30.

☒ Applies ☐ Does Not Apply

2. Project Completion Report: Grantee shall submit to Grantor a final Project report within forty-five (45) days after the Project Completion Date. The final Project report shall be a comprehensive report of the Project for the entire Project Period and including, among other things, a complete technical report of the Project and outcomes. A final financial report shall be submitted within ninety (90) days after the Project Completion Date. This final financial report shall be a comprehensive report covering the entire Project Period.

☒ Applies ☐ Does Not Apply

3. Entrepreneurial Signature Program Quarterly Progress Report: Grantee shall deliver to Grantor within thirty (30) days after the end of each calendar quarter of the Project Period a progress report covering the Grantee's activities on the Project during such calendar quarter.

☐ Applies ☒ Does Not Apply

4. The Quarterly Progress Report due for the final calendar quarter during the Project Period shall constitute the final Project report.

☐ Applies ☒ Does Not Apply

5. Semi Annual Metric Report: Grantee shall deliver to Grantor, within thirty (30) days after the end of each Semi Annual Metric period throughout the Term of the Agreement, a Metric Report. Semi Annual Metric period end dates: June 30 and December 31.

☒ Applies ☐ Does Not Apply

Exhibit I – Statement of Conditions

6. Site Visits and Review Meetings: Grantee's reporting requirements are in addition to site visits and review meetings that may be conducted from time to time as provided in the Agreement.

☒ Applies ☐ Does Not Apply

7. Additional Information: Grantor reserves the right to require Grantee to provide from time to time any other documentation that may supplement or clarify the explanation or tracking of Project data. Grantee shall respond promptly to any Grantor request for additional information related to Grantee's activities in connection with the Project. The reasonable cost incurred by Grantee to prepare and deliver such additional data and information shall constitute eligible expenses of the Project.

☒ Applies ☐ Does Not Apply

F. OTHER CONDITIONS:

1. Board Meetings: A representative of Grantor may attend meetings of Grantee's board of directors, advisory board, or other governing body. Grantee shall inform Grantor in advance of Grantee board meetings with sufficient notice to enable Grantor to send a representative to the meeting.

☒ Applies ☐ Does Not Apply

2. Collaboration: Grantee shall make a good faith effort to collaborate with other State of Ohio programs and State of Ohio program grantees that are not in direct competition with Grantee to provide technical assistance to similar and related activities.

☒ Applies ☐ Does Not Apply

3. Place of Business: Grantee shall maintain a Principal Place of Business (as that term is defined in Exhibit II) in the State of Ohio during the Term of this Agreement. Grantee's Principal Place of Business shall be as set forth in Exhibit V or as otherwise identified in writing to Grantor.

☒ Applies ☐ Does Not Apply

4. Pre-Seed Tax Credit: In all cases where Grantee is both a recipient of grants from the Ohio Third Frontier Pre-Seed Fund initiative and participates as an investor seeking a technology investment tax credit under Ohio Revised Code § 122.15, Grantee shall limit the amount of the tax credit claimed to the percentage of Grantee's investment comprised of Grantee's Cost Share Amount. Grantee shall not claim or receive a tax credit for any part of its investment made with Grant Funds.

☐ Applies ☒ Does Not Apply

Exhibit I – Statement of Conditions

5. Acknowledgements: In addition to acknowledging the State of Ohio, in general, for financial support of the Project, Grantee shall acknowledge the following in all marketing, communications, meetings, and outreach events as applicable:

A. Development Services Agency	<input checked="" type="checkbox"/> Applies	<input type="checkbox"/> Does not apply
B. Ohio Third Frontier	<input checked="" type="checkbox"/> Applies	<input type="checkbox"/> Does not apply
C. Thomas Edison Program	<input type="checkbox"/> Applies	<input checked="" type="checkbox"/> Does not apply

6. Co-Branding: To the degree possible and practical, Grantee agrees to co-brand their project related communication materials and otherwise routinely and visibly present the logo of the Ohio Third Frontier thereby demonstrating the partnership between Grantee and the Ohio Third Frontier. Grantor will provide co-branding guidelines to Grantee and will work with Grantee to arrange an appropriate method and scope of the co-branding.

☒ Applies ☐ Does Not Apply

7. Encouraging Diversity, Growth and Equity (EDGE) Program: Grantee must actively pursue the objectives and goals of the EDGE Program as set forth in Ohio Revised Code 123.152.

☒ Applies ☐ Does Not Apply

8. Conferences and Events: From time to time during the Term of the Agreement, Grantee may organize conferences or other events open to industry representatives or the general public related to the Project, the subject matter of the Project or associated work of Grantee or its Collaborators. In consideration of the Grant, up to two (2) representatives of Grantor may attend such conferences and events for the purposes of sharing information between Grantee, its Collaborators and other constituents, and Grantor. Grantee shall provide Grantor reasonable advance notice of any such conferences and events. Grantor will not be charged registration fees to attend such events.

☒ Applies ☐ Does Not Apply

9. The conditions of 15 C.F.R. Part 14—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, other Non-Profit and Commercial Organizations are made applicable to Grantee by Grantor's award from The United States Department of Commerce for implementation of the Ohio Manufacturing Extension Partnership program. Grantor reserves the right to call upon the Grantee to provide documentation, copies of records, audits and verification or additional detail on services provided and matching revenue reported when such information is requested of the Grantee by National Institute of Standards and Technology – Manufacturing Extension Partnership, Department of Commerce, Office of Inspector General, the Comptroller of The United States or any duly authorized representative, or Grantor.

☐ Applies ☒ Does Not Apply

Exhibit III – Cost Share Guidelines

OHIO DEVELOPMENT SERVICES AGENCY COST SHARE GUIDELINES FOR GRANT AGREEMENT

All capitalized terms used but not otherwise defined in these Cost Share Guidelines shall have the meanings given them in the Grant Agreement to which this Exhibit is attached.

Grantee will adhere to the cost share requirements set forth in this Exhibit governing the identification and use of resources other than Grant Funds for eligible expenses of the Project.

The Cost Share Amount may be provided in cash or in kind as designated in Exhibit I to the Agreement. Cash and in-kind contributions to the Cost Share Amount may be as follows:

- A. Cash counted against the Cost Share Amount includes eligible expenses of the Project (1) incurred to perform activities in direct support of the Project during the Project Period; (2) charged to resources of Grantee or of a subgrantee or subcontractor engaged by Grantee on the Project, and (3) documented in Grant Accounts or in the Grant-related financial books and records of the subgrantee or subcontractor, as the context requires. Cash contributions to the Cost Share Amount include resources other than Grant Funds provided by a third party to Grantee, a subgrantee or subcontractor, or to a parent organization specifically for the use or support of Grantee, a subgrantee or a subcontractor, which are actually used to perform Project activities.
- B. In-kind contributions to the Cost Share Amount include the value of goods and/or services which are an eligible expense of the Project (1) supplied by Grantee, a subgrantee, subcontractor or other third party during the Project Period, (2) received by Grantee, a subgrantee or subcontractor during the specific period to which the cost sharing or matching requirement applies and used by Grantee, a subgrantee or subcontractor to perform activities in direct support of the Project, but (3) which are not separately accounted for by Grantee in the Grant Accounts or by a subgrantee or subcontractor in its respective Grant-related financial books and records.

General Conditions and Restrictions:

- A. Contributions to the Cost Share Amount must be for eligible expenses consistent with the then-current version of Federal Office of Management and Budget Circular A-21 and must be accessible to verification and audit.
- B. Contributions to the Cost Share Amount must provide direct support for the Project. Expenditures that provide coincidental benefits to or support for the Project may not be counted against the Cost Share Amount. All resources counted against the Cost Share Amount must be necessary and reasonable considering the Project objectives and the activities to be performed as part of the Project.
- C. Contributions, whether cash or in-kind, may not be counted against the Cost Share Amount if the same resources are used to satisfy the cost share requirement of any other funding program.

Exhibit III – Cost Share Guidelines

- D. Contributions of financial support, both cash and in-kind, included as part of the Project's Cost Share Amount must be made between the start date as set forth in Exhibit I and the Project Completion Date.
- E. Grantee may request Grantor approval of financial support for the Project that does not meet the cost share requirements set forth above. Any such request shall be made by Grantee in writing, and such financial support may be counted against the Cost Share Amount only if and to the extent approved by Grantor in writing prior to the contribution of such financial support. Grantor may give or withhold approval within its discretion.
- F. Value of Contributed Goods and Services.
 - 1.) Services are contributed to a Project (*i.e.*, donated services) when an individual employed by the contributor of the donated services works to perform Project activities without charge to Grantee, a subgrantee or subcontractor. The value of donated services will be an amount equal to the individual's regular rate of pay from the contributor of the individual's services, including fringe benefits up to 30% of base pay, for the period of time during which the individual performs Project activities *provided that* the individual whose services are contributed perform functions for Grantee, a subgrantee or subcontractor equivalent to the services for which the individual is compensated by the contributor.
 - 2.) The value of supplies and materials contributed to the Project will be an amount equal to the fair market value of such supplies and materials at the time they are contributed to Grantee, a subgrantee or subcontractor. Grantee shall provide documentation supporting its determination of the fair market value of such supplies and materials.
 - 3.) In-kind contributions may include use of equipment and/or space (facilities) which are necessary and reasonable for the Project. The value of the use of equipment and/or space (facilities) will be an amount equal to their fair rental value of the equipment and/or space at the time it is contributed to Grantee, a subgrantee or subcontractor. Grantee shall provide documentation supporting its determination of the fair rental value of such equipment and/or space (facilities).
 - 4.) In-kind contributions may include transfer of ownership to equipment, buildings, and/or land which are necessary and reasonable for the Project. The value of any such equipment, buildings, and/or land will be an amount equal to its respective fair market value at the time the equipment, buildings, and/or land is contributed to Grantee, a subgrantee or subcontractor. Grantee shall provide documentation supporting its determination of the fair market value of such equipment, buildings and/or land.
- G. Documentation of all contributions to the Cost Share Amount must identify the source of the contribution and its address, state the value of the contribution (whether made in cash or in-kind), and provide as to any in-kind contribution a reasonably detailed description of the method of valuation of such contribution.

Exhibit III – Cost Share Guidelines

- H. Grantee shall maintain in its records related to the Project documentation sufficient to verify all Project costs and contributions claimed as part of the Cost Share Amount, including the supporting documentation for valuation of in-kind contributions. Cost share documentation will be subject to inspection and audit as provided in the Agreement.
- I. Certification of Cost Share:
 - 1.) The method and frequency of reporting contributions to the Cost Share Amount, whether made in cash or in-kind is the same as financial reporting for the Grant Funds.
 - 2.) Grantee must identify cash and in-kind contributions to the Cost Share Amount in separate columns in its financial reports to Grantor.
 - 3.) Grantee shall maintain during the Project Period an itemized list of in-kind contributions to the Cost Share Amount. Grantee shall make such list available to Grantor for review upon request.
- J. Modification of Cost Share Guidelines: Grantor may revise the Cost Share Guidelines from time to time. Any changes to the Cost Share Guidelines shall be effective upon delivery of written notice to Grantee and shall apply prospectively.